

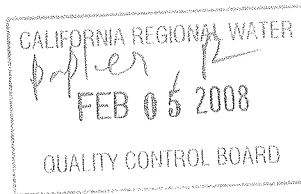
NCS-200000X-SF

**Recording Requested By:**

Kaiser Foundation Hospitals  
Legal Department  
One Kaiser Plaza, 19<sup>th</sup> Fl.  
Oakland, CA 94612  
Attn: Indrajit Obeysekere, Esq.

**When Recorded, Mail To:**

Bruce H. Wolfe, Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612



DOCUMENT: 19681572

Pages: 11



Fees . . . .	37.00
Taxes . . .	
Copies . .	
AMT PAID	37.00

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
First American Title Company

RDE # 007  
12/13/2007  
8:00 AM

*WHA JV/NT*

**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

[Former AMI Semiconductor Site, 3800 Homestead Road, Santa Clara, Santa Clara County]

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 01<sup>st</sup> day of November, 2006 by Kaiser Foundation Hospitals, a California non profit public benefit corporation ("Covenantor") who is the Owner of record of that certain property situated at 3800 Homestead Road, in the City of Santa Clara, County of Santa Clara, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Water Board"), with reference to the following facts:

A. History of Contamination of the Burdened Property.

From 1985 to 1999, AMIS performed investigations to characterize the nature and extent of impacted soil and groundwater. These investigative activities indicated that volatile organic compounds (VOCs) were released to the on-site soil and groundwater and migrated off-site to the northeast approximately 2,000 feet.

From 1990 to 1993, a soil vapor extraction system (SVE) removed approximately 170 pounds of VOCs until the SVE was shut down in 1993. Groundwater extraction began at the Site with periodic pumping of the shallowest wells in late 1991, and continuous on-site groundwater extraction and treatment system began in 1993. Off-site groundwater extraction began in 1994.

To control source zone contaminants, AMIS conducted an in-situ remediation pilot test by injecting potassium permanganate, implemented a full-scale version of the in-situ remediation,

and reported results of this remedial activity.

In 2004, AMIS completed a risk assessment (RA). The RA concluded that Site soil and groundwater conditions do not present unacceptable risk to human health and the environment except for the use of on-site groundwater as a drinking water source. To prohibit the use of on-site groundwater for drinking purposes, Kaiser recorded a deed restriction for the site.

By 2000, the groundwater extraction system had reached the practical limit of the technology. Based on the minimal removal effectiveness of the groundwater extraction technology, AMIS ceased groundwater extraction operations subject to maintaining the groundwater treatment system in an operable condition.

Water is supplied to the Site through public utilities. Institutional controls at former AMI prohibit the use of shallow groundwater for drinking water.

#### C. Current Conditions.

The most recent groundwater sampling results presented in the Annual 2005 Groundwater Monitoring Report dated January 31, 2006 indicate that the maximum concentration of TCE in groundwater from the shallowest water bearing zone (the Upper-Saturated Zone) was 470 micrograms per liter from the groundwater sample collected from Monitoring Well P-10, located in the southeast corner of the Site. The remaining shallow groundwater samples collected from across the Site in 2005 had lower TCE concentrations than those found at Monitoring Well P-10.

One of the central human health concerns related to TCE occurrence in shallow groundwater at the Site involves the potential for TCE to volatilize and degrade indoor air quality within buildings that overlie subsurface areas that contain TCE contamination. The RWQCB has published Environmental Screening Level (ESL) criteria to evaluate the indoor air quality concern. For TCE, the ESL is 530 micrograms per liter for high permeability soils and 2,000 micrograms per liter for moderate to low permeability soils. Both of these ESLs are for sensitive land uses (residential standards). No concentrations of TCE in shallow groundwater measured throughout 2005 at the Site exceeded either of these sensitive land use ESLs.

#### D. Future Remediation Activities.

AMIS will complete the last task of the Order by implementing groundwater remediation curtailment. Groundwater monitoring at the Site will continue based on the 2004 revised SMP. Data collected in 2005 will be presented in the 2005 Annual Groundwater Monitoring Report. At that time, an evaluation of VOC concentration trends after treatment system shut-down will be conducted.

#### E. Current and Projected Landuse of the Site

Kaiser Foundation Hospitals acquired the Site from Tandem Computers Incorporated as of

December 31, 1992. Kaiser Foundation Hospitals promptly began work to develop the Site for medical related uses including, but not limited to, a hospital, medical offices, a central utility building, parking facilities and related uses. The City of Santa Clara certified a final environmental impact report in 1994 approving these uses and signed a Development Agreement with Kaiser Foundation Hospital on September 7, 1995. The sensitive land uses for the property included, but were not limited to, hospital, medical office buildings, and associated support facilities.

#### F. Adjacent Land Uses and Population Potentially Affected.

Covenantor desires and intends that in order to benefit the Water Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid the use of groundwater on the site which contains chlorinated solvents, principally TCE.

### ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence beneath the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Water Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Water Board

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Water Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding

on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Water Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

2.1 Water Board. "Water Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III  
DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. All uses and development shall preserve the remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Water Board, unless otherwise expressly permitted in writing by the Water Board.
- b. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, landscaping, or industrial uses, except (1) as part of the existing groundwater monitoring, extraction and treatment remedial measures or (2) as otherwise expressly permitted in writing by the Water Board.
- c. The Owner shall notify the Water Board of each of the following: (1) The type, cause, location and date of any disturbance to any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Water Board, which could affect the ability of such remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Water Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.
- d. The Covenantor agrees that the Water Board, and/or any persons acting pursuant to Water Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
- e. All use and development of the Burdened Property shall preserve, as necessary, the integrity of any remedial structures (e.g. caps, storage pads.)

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Water Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Water Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument that shall accompany all purchase agreements or leases relating

to the property. Any such instrument shall contain the following statement:

The land described herein may contain hazardous materials in soils and in the groundwater under the property, and is subject to a Covenant and Environmental Restriction dated as of 19681570, 2000, and recorded on 12-13-00, 2000, in the Official Records of Santa Clara County, California, as Document No. \_\_\_\_\_, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

#### ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Water Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof, may apply to the Water Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

*If To: "Covenantor"*

Kaiser Permanente  
100 S. Los Robles, Ste. 410  
Pasadena, CA 91188  
Attn: Tim Havel  
Director, Western Environmental, Health and Safety Services Hub

*If To: "Water Board"*

Regional Water Quality Control Board  
San Francisco Bay Region  
Attention: Executive Officer  
1515 Clay Street, Suite 1400  
Oakland, California 94612

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Water Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within thirty (30) working days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that

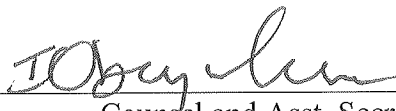
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would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

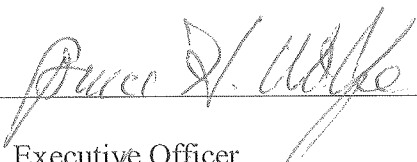
Covenantor:

Kaiser Foundation Hospitals  
a California nonprofit public benefit corporation

By:   
Title: Counsel and Asst. Secretary  
Date: 11/6/07

Agency:

State of California  
Regional Water Quality Board  
San Francisco Bay Region

By:   
Title: Executive Officer  
Date: 11/6/07



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

SS.

On NOV 6, 2007

Date

before me, Howard Leong, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

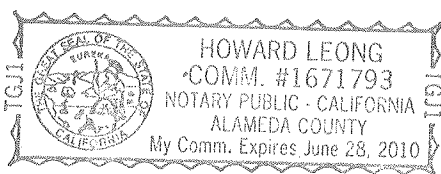
personally appeared

BRUCE H WOLFE

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document:

COVENANT

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

### Capacity(ies) Claimed by Signer

Signer's Name:

☐ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

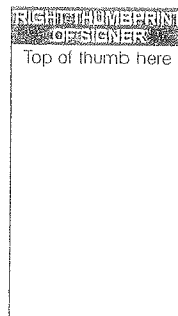
☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

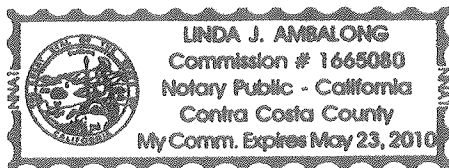
County of Alameda

On December 7, 2007 before me, Linda J. Ambalong, Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Indrajit Obeysekere  
Name(s) of Signer(s)

☒ personally known to me

☐ (or proved to me on the basis of satisfactory evidence)



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Linda J. Ambalong  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Covenant

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

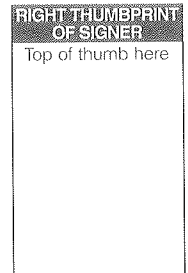


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real Property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

Parcel A, as shown on a Parcel Map filed for record on April 12, 1972 in Book 299 of Maps, page 20, Records of Santa Clara County.